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REMARKS

Claims 1-34 are pending in the present application. In the Office Action mailed June 28, 2004, the Examiner rejected claims 1-4, 8-9, 20, 22-26, and 31 under 35 U.S.C. §103(a) as being unpatentable over Fenstemaker et al. (USP 6,490,684 B1) in view of Moeller et al. (USP 6,694,384 B1). The Examiner next rejected claims 5-7, 10, and 30 under 35 U.S.C. §103(a) as being unpatentable over Fenstemaker et al., Moeller et al., and in view of Hube et al. (USP 5,442,541). Claims 13, 18, and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fenstemaker et al. in view of Hube et al. Claims 11-12, 14-17, 19, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fenstemaker et al. Claims 27-29, 32, and 34 were rejected under 35 U.S.C. §102(e) as being anticipated by Fenstemaker et al. The Examiner also stated that the Information Disclosure Statement filed on May 15, 2001 fails to comply with 37 CFR 1.98(a)(1).

Information Disclosure Statement

The Examiner stated that the IDS filed May 18, 2001, "fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office." As such, the Examiner stated that the IDS was placed in the application file but the Examiner did not consider the IDS.

Applicant is uncertain why the Examiner found the IDS objectionable. That is, the IDS is simply a statement that Applicant was not aware of any patents or publications which Applicant considered material to patentability. However, Applicant utilized the opportunity to make the Examiner aware of four co-pending patent applications that Applicant believed the Examiner might consider relevant to the examination of the instant application. In accordance with 37 CFR 1.98(a)(23), Applicant provided a listing of the serial numbers of the co-pending applications. That is, 37 CFR 1.98(a)(23) states that a listing must be provided of "all other information or that portion which caused to be listed, except that no copy of a U.S. patent application need be included." (Emphasis added). Therefore, Applicant believes the IDS filed May 18, 2001 to be in full compliance all relevant statutes and rules. As such, Applicant respectfully requests full consideration of the IDS filed May 18, 2001, in accordance with MPEP rules for handling of a properly filed IDS.

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generated and downloaded to the enablement requesting device, whereby a separate and distinct “feature control manager” of database utilizes the passive key and actually performs the enablement.

In summary, the claimed “data script creator,” which is configured to generate a “data script” is distinct from the “key” taught by Fentsemaker et al. on numerous points. First, as one of ordinary skill in the art will recognize and claim 27 makes clear, a data script is not a passive set of alphanumeric symbols as in the key of Fentsemaker et al. Second, the data script itself, and not some separate “feature control manager,” performs the enabling of the inactive application. Third, the data script, which actually performs the enabling, is transmitted to the device. In contrast, Fentsemaker et al. teaches that the “feature control manager,” which actually performs the enabling of the inactive feature, is part of the requesting ultrasound device. See Fig. 1.

For at least these reasons, claim 27 is patentably distinct from the art of record. As such, claims 28–34 are in condition for allowance pursuant to the chain of dependency. However, dependent claims 28–34 include subject matter that is both additionally distinguishable from the art of record and further illustrative of the distinctions articulated with respect to claim 27. As such, Applicant wishes to take the opportunity to highlight some of these additional distinctions.

For example, with respect to claim 28, the Examiner stated that “Fentsemaker et al. teach that wherein the data script creator is further configured to generate a data script specific to at least one of a *system identifier*, an *application identifier*, a *user identifier*, and a *host identifier* [Col. 3, Ins. 31–34].” (Emphasis added). However, Fentsemaker et al. does not teach any “data script” nor one that is specific to at least one of the specifically recited set of criteria.

The section cited by the Examiner teaches that “the request preferably comprises information identifying the feature to be enabled and the specific ultrasound device.” Col. 3, Ins. 32–34. Fenstemaker et al. teaches that the key be “unique to the ultrasound device” and “to a corresponding feature.” Col. 4, Ins. 45–48. Therefore, Fenstemaker et al. does not teach that the criteria for generation include “a system identifier, an application identifier, a user identifier, and a host identifier.” That is, Fentsemaker et al., at most, teaches two criteria to which the key is unique: the desired feature and the specific ultrasound device. See Col. 3, Ins. 32–34. On the other hand, claim 28 includes four different criteria that may be considered, the scope of which is well beyond that which is taught or suggested within Fentsemaker et al. As such, claim 28 is additionally distinguishable, and patentably distinct from, Fentsemaker et al.

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Rejections Under Section 102(e)

The Examiner rejected claims 27–29, 32, and 34 as being anticipated by Fenstemaker et al. Regarding claim 27, the Examiner stated that Fenstemaker et al. teaches “a data script creator designed to generate a data script configured to enable a selected inactive application, wherein the data script is further configured to automatically enable the selected inactive application only upon initialization of the device [col. 3, lines. 27–37 and col. 4, lines. 1–8].” However, contrary to the Examiner’s position, Fenstemaker et al. fails to teach or suggest either a data script creator or a data script because Fenstemaker et al. simply does not teach the use of any data script, as claimed.

It appears that the Examiner concluded that the “key” taught by Fenstemaker et al. is the same as a “data script” as called for in claim 27. However, as clearly illustrated by the elements of the claim, the “key” taught by Fenstemaker et al. is not equivalent and does not function in a manner consistent with the “data script” called for in claim 27. Specifically, within the various sections cited by the Examiner, Fenstemaker et al. teaches, “the key is generated by the remote source (step 420) and transmitted to the ultrasound device 100.” Col. 3, lns. 34–36. Fenstemaker et al. continues by stating that “after the key is either locally or remotely received, the disabled feature is enabled with the key (step 520).” Col. 3, lns. 52–54. To accomplish enablement, Fenstemaker et al. teaches that “the feature control manager 130 compares the validation information stored in the feature-controlled database 160 with the received key, which preferably also is stored in the feature-controlled database 160 (step 520).” Col. 3, lns. 57–61. Fenstemaker et al. then states that “[i]f the received key is valid, the feature control manager 130 generates a command to the ultrasound device application 110 to enable the use of the feature (step 530).” Col. 3, lns. 61–64. Therefore, Fenstemaker et al. teaches the use of a passive key “in the form of alphanumeric symbols” that is utilized by a separate and distinct “feature control manager” in order to compare the key to “validation information” previously stored in a local database. Col. 3, lns. 1–2 and 57–61.

On the other hand, claim 27 calls for “a data script creator designed to generate a data script configured to enable a selected inactive application.” Simply, the data script called for in claim 27 is not a passive set of alphanumeric symbols but instead is “configured to enable a selected inactive application.” That is the data script, which is generated and sent to the device requesting enablement, performs the enablement and automatically enables the selected inactive application. This is in direct contrast to Fenstemaker et al. which teaches that the key be

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Regarding claim 32, the Examiner stated that "Fentsemaker et al. teach that wherein the data script is further configured to prevent enabling of the selected inactive application." The Examiner stated that such is taught in column 4, lines 1-8, because, in the interpretation of the Examiner, "the feature does not get enabled until the system is rebooted." However, the Examiner did not address the actual elements of the cited section of the claim. That is, as previously described with respect to claim 27, Fentsemaker et al. simply teaches a passive key that consists of nothing more than "alphanumeric symbols" and in no way teaches or suggests a "data script" that is configured "to prevent enabling of the selected inactive application within the medical imaging scanner during device operation." Claim 32 further defines the functions of the data script as being specifically configured to take active steps to "prevent" enablement while the medical imaging scanner is in operation. On the other hand, Fentsemaker et al. does not teach that the key has such capabilities. Rather, Fentsemaker et al. relies upon the previously recited "feature control manager," which, as previously shown with respect to claim 27, actually performs enablement and controls when enablement occurs. See Col. 3, Ins. 57-64 and Col. 4, Ins. 1-15.

Additionally, the section cited by the Examiner does not teach that enablement is prevented while the system is in operation but, at most, only teaches that validation occurs at power-up. Col. 4, Ins. 1-3. That is, the cited section states, "Preferably, the feature control manager 130 automatically attempts to validate every feature each time the ultrasound device 100 is powered-up," "Alternatively, the validation function can be automatically performed each time an ultrasound application 110 is asked to perform a feature," and "As another alternative, some features can be automatically validated at power-up and other features can be automatically validated on a per-need basis." Col. 4, Ins. 1-8 (emphasis added). Therefore, Fenstemaker et al. teaches various times when validation of the previously enabled option may be performed, wherein one of the times for this validation is a power-up. Fenstemaker et al. does not teach that anything is prevented from happening, enablement or otherwise.

Furthermore, Fenstemaker et al. teaches a myriad of validation options which the "feature control manager" may implement for enabling but does not teach or suggest that enablement is prevented during operation. Rather, Fenstemaker et al. teaches that "the feature control manager 130 automatically attempts to validate every feature each time the ultrasound device 100 is powered up" or that "the validation function can be automatically confirmed each time an ultrasound application 110 is asked to perform a feature" or "on a per-need basis." Col. 4, Ins. 1-

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15. The Examiner has mistakenly interpreted a teaching of a litany of possible times when validation could occur as a teaching of an exclusive list so that other times for validation are precluded or "prevented." This is an incorrect assumption as Fenstemaker et al. does not teach or suggest prevention at all but merely provides a list of possible verification times. Therefore, while Fenstemaker et al. teaches multiple occasions when validation may occur, it does not teach that "the data script is further configured to prevent enabling of the selected inactive application within the medical imaging scanner during device operation," as called for. Accordingly, claim 32 is additionally distinguishable from the art of record.

Additionally, Fenstemaker et al. make explicitly clear that "validation" and "enabling" or "initializing" are not the same. That is, Fenstemaker et al. states, "Next, the feature control manager 130 compares the validation information stored in the feature control database 160 with the received key, which preferably also is stored in the feature control database 160 (step 520)." Col. 3, Ins. 57-61 (emphasis added). Fenstemaker et al. then continues, "If the received key is valid, the feature control manager 130 generates a command to the ultrasound device application 110 to enable the use of the feature (step 530)." 61-64 (emphasis added). Therefore, Fenstemaker et al. does not teach preventing enablement while the device is in operation.

Rejections Under §103(a)

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP §2142. Specifically, to establish a *prima facie* case of obviousness, the Examiner must establish at least three explicit criterion.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP §2143

The Examiner asserted that Fenstemaker et al. "teach...automatically installing the activation key and enabling the inactive option upon initialization of the device [col., 3, lines 52-54; col. 4, lines 1-8]." However, as previously addressed Fenstemaker et al. does not teach or suggest "installing automatically installing the activation key and enabling the inactive option upon initialization of the device," as claimed, but instead, in the very section cited by the

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Examiner, teaches "the feature control manager 130 automatically attempts to validate every feature each time the ultrasound device 100 is powered-up." Col. 4, lns. 1-3. Therefore, Fenstemaker et al. teaches that validation of the previously installed key may be performed at every power-up. On the other hand, claim 1 calls for the actual installation of the yet to-be-installed key upon initialization of the device.

Additionally, while claim 1 calls for "automatically...enabling the inactive option upon initialization of the device," Fenstemaker et al. only teaches that validation of the key occurs at power-up. See Col. 4, lns. 1-3. Fenstemaker et al. make explicitly clear that "validation" and "installation" are not the same. That is, Fenstemaker et al. states, "Next, the feature control manager 130 compares the validation information stored in the feature control database 160 with the received key, which preferably also is stored in the feature control database 160 (step 520)." Col. 3, lns. 57-61 (emphasis added). Fenstemaker et al. then continues, "If the received key is valid, the feature control manager 130 generates a command to the ultrasound device application 110 to enable the use of the feature (step 530)." *Id.* lns. 61-64 (emphasis added). Therefore, Fenstemaker et al. does not teach or suggest "automatically...enabling the inactive option upon initialization of the device."

For at least these reasons, Applicant believes claim 1 is patentably distinct from the art of record. Further, claims 2-10 are in condition for allowance pursuant to the chain of dependency. However, claims 2-10 include subject matter that is additionally distinguishable from the art of record. As such, Applicant will highlight some of the more apparent distinctions.

Regarding claim 8, the Examiner apparently acknowledged that Fenstemaker et al. does not teach "determining a host identifier" but stated that such is "inherent to the system as to know about the remote computer/server." (Emphasis added). It appears that the Examiner contended that the system has "determined" a "host identifier" simply because the system is aware that a remote device exists because such is "inherent" in the art of record.

The Examiner must provide rational or evidence tending to show the asserted inherency. See MPEP §2112. Furthermore, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). Simply, in proffering a rejection relying on inherency the Examiner must first overcome a heavy burden.

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The Examiner failed to meet this burden as the only "evidence" provided is not found in the art of record. Specifically Applicant respectfully disagrees that "determining a host identifier" is "inherent" and submits that when a computer, all having a processor serial number, is connected to the internet the other computers on the internet are not immediately aware of the unique processor serial number. As such, the Examiner's "evidence" is insufficient to support a rejection based on inherency. See MPEP §2112.

Additionally, claim 8 calls for "determining a system identifier" and "identifying a modality," which the Examiner concluded were both taught in column 3, lines 31-34 of Fenstemaker et al. However, the cited section states, "As described in more detail below, the request preferably comprises information identifying the feature to be enabled and the specific ultrasound device." Col. 3, lns. 31-34. Therefore, Fenstemaker et al. teaches a determination of only a feature and a specific ultrasound device. While Applicant agrees that determining a "specific ultrasound device" may be tantamount to determining a "system identifier," such does not teach or suggest "identifying a modality." In fact, as Fenstemaker et al. is only concerned with ultrasound devices, only one modality is present and, therefore, identifying a modality would be unnecessary. Furthermore, Fenstemaker et al. does not teach or suggest any way in which the system could even be extended beyond ultrasound devices. For at least these reasons, Applicant believes claim 8 is patentably distinct from the art of record.

Regarding claim 10, the Examiner provided a detailed analysis of the claim but did not address some elements. Specifically, claim 10, in part, calls for "determining if a user status includes one of...a non-completion of training requirements." This element of the claim further serves to illustrate the broad nature of the claimed invention. That is, unlike Fenstemaker et al., the centralized facility of the claimed invention can control access to the option based on a wide variety of criteria not taught or suggested by Fenstemaker et al. For at least these reasons, claim 10 is patentably distinct from the art of record.

Regarding claim 11, the Examiner acknowledged that "Fenstemaker et al do not disclose about determining a device operation status." Nevertheless, the Examiner concluded that "a routineer in the art would know how to determine a device operation status as just by checking the status if the device is performing any one of functions in the device or running any application program or if the processor is busy." Therefore, the Examiner concluded such would have been obvious to "let the device finish the current job."

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The burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP §2142. When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

The Examiner did not provide any motivation for the proposed modification beyond a purpose not taught or suggested in the art of record but found explicitly stated in the Application. See Application, ¶¶3 and 7. That is, as previously addressed, Fenstemaker et al. does not teach “prevention” of enablement. In fact, nowhere does the art of record teach or suggest a system for automatically enabling options that takes the affirmative and proactive step of “prohibiting” enablement when the device is in operation.

Therefore, since no support for establishing a *prima facie* case of obviousness exists anywhere in the art of record. It seems that the rejection is based on impermissible hindsight and cannot be sustained. Accordingly, Applicant believes claims 12-21 are in condition for allowance pursuant to the chain of dependency. However, the Examiner misinterpreted some of the elements of claims 12-21 and Applicant would like to take the opportunity to correct such errors.

For example, claim 12 calls for the remote processor to be “programmed to automatically initialize the at least one inactive software application only upon reboot of the device.” The Examiner cited column 4, lines 1-8 of Fenstemaker et al. as teaching such but the cited section is unsupportive. That is, the cited section states, “Preferably, the feature control manager 130 automatically attempts to validate every feature each time the ultrasound device 100 is powered-up,” “Alternatively, the validation function can be automatically performed each time an ultrasound application 110 is asked to perform a feature,” and “As another alternative, some features can be automatically validated at power-up and other features can be automatically validated on a per-need basis.” Col. 4, Ins. 1-8. Therefore, Fenstemaker et al. teaches various times when validation of the previously enabled option may be performed. On the other hand, claim 12 calls for the remote process to initialize the inactive option only upon reboot.

Fenstemaker et al. make explicitly clear that “validation” and “enabling” or “initializing” are not the same. That is, Fenstemaker et al. states, “Next, the feature control manager 130 compares the validation information stored in the feature control database 160 with the received key, which preferably also is stored in the feature control database 160 (step 520).” Col. 3, Ins.

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57-61 (emphasis added). Fenstemaker et al. then continues, "If the received key is valid, the feature control manager 130 generates a command to the ultrasound device application 110 to enable the use of the feature (step 530)." 61-64 (emphasis added). Accordingly, the art of record does not teach or suggest that which is expressly called for in claim 12.

Claim 14 calls for the remote processor to be "programmed to schedule a software application initialization in response to instructions from the user." The Examiner cited column 4, lines 16-30 of Fenstemaker et al. but the section is unsupportive. Specifically, the section teaches that an expiration timing for the enabled option may be scheduled but does not teach or suggest that the "initialization" may be scheduled. As such, claim 14 is patentably distinct from the art of record.

Regarding claim 16 the Examiner asserted that column 1, lines 38-42 of Fenstemaker et al. as teaching that "the medical device includes one of a cardiology device, a computed radiology device, a computed tomography device, a magnetic resonance imaging device, an x-ray device, an ultrasound device, a nuclear medicine device, and a positron emission tomography device." However, as previously address, Fenstemaker et al. is concerned only with ultrasound devices and make not teaching or suggest of how to interact with such wide varying and diverse modalities. Accordingly, claim 16 is patentably distinct from the art of record.

Regarding claim 22, the Examiner asserted that Fenstemaker et al. teaches the generation and transmission of a software script from the centralized facility to the device. However, as previously addressed with respect to claim 27, Fenstemaker et al. does not teach or suggest any such script designed to enable the inactive option. Rather, Fenstemaker et al. only generates and transmits a passive, alphanumeric key that is received and installed by a "feature control manager" resident with the ultrasound device. See Col. 3, Ins. 26-67. Accordingly, as Fenstemaker et al. fails to teach or suggest any script, claim 22 is patentably distinct from the art of record.

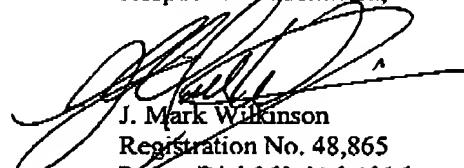
Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-34.

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Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



J. Mark Wilkinson
Registration No. 48,865
Direct Dial 262-376-5016
jmw@zpspatents.com

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P.O. ADDRESS:

Ziolkowski Patent Solutions Group, LLC
14135 North Cedarburg Road
Mequon, WI 53097-1416
262-376-5170